

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 19**

SEH AMERICA, INC.

Employer

and

Case 36-RC-6319

INTERNATIONAL UNION OF  
OPERATING ENGINEERS,  
LOCAL 701, AFL-CIO<sup>1</sup>

Petitioner

**DECISION AND DIRECTION OF ELECTION**

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board. Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned. Upon the entire record<sup>2</sup> in this proceeding, the undersigned makes the following findings and conclusions.<sup>3</sup>

**I. SUMMARY**

The Employer is a State of Washington corporation engaged in the business of manufacturing silicon wafers at its plant located in Vancouver, Washington (hereinafter "plant"). The Petitioner filed the instant petition seeking to represent a unit composed of approximately 108 CZ department operators employed by the Employer at its plant.<sup>4</sup> The Employer asserts that the unit sought by the Petitioner is inappropriate because it excludes other employees who share a community of interest with the CZ department operators. In particular, the Employer maintains that the presumptively appropriate unit for the purpose of collective bargaining is a wall-to-wall unit consisting of approximately 505 production and maintenance employees, including operators, technicians, schedulers, training coordinators, order management,

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<sup>1</sup> Petitioner's name appears as corrected herein.

<sup>2</sup> The Employer and the Petitioner timely filed briefs, which were duly considered.

<sup>3</sup> The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein. The labor organization involved claims to represent certain employees of the Employer and a question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

<sup>4</sup> The Petitioner stated during the hearing that it is alternatively seeking a unit consisting of all operators, maintenance technicians, facilities technicians, and facility plant operators. However, the Petitioner did not address this issue in its brief and, thus, would appear to have abandoned this alternative unit theory. Regardless, neither the petitioned-for unit nor this alternative unit is appropriate in the circumstances of this case as I have discussed below.

maintenance technicians, facility technicians, facility plant operators, and shipping/receiving specialists.<sup>5</sup>

A wall-to-wall unit, such as that proposed here by the Employer, is presumptively appropriate under the Act. It is, therefore, the Petitioner's burden to establish that the petitioned-for unit of CZ department operators is appropriate. However, the record evidence in the instant case is insufficient to rebut the presumptive appropriateness of the petitioned-for unit. Accordingly, I shall order an election be held in the wall-to-wall unit of production and maintenance employees.

Below, I have set forth the record evidence concerning the Employer's operations and the community of interest factors the Board considers when determining unit appropriateness. Following the presentation of the evidence, I have set forth a section applying the Board's legal standards to the evidence. The decision concludes with a direction of election and the procedures for requesting review of this decision.

## **II. RECORD EVIDENCE**

### **A. The Employer's Operations**

The Employer manufactures silicone wafers, which are used in the production of integrated circuits for automobiles, computers, solar panels, memory devices, and logic devices. The process for making the completed wafers begins in the Employer's CZ department with the melting of polysilicon together with other materials. A long cylindrical piece of silicon crystal, weighing approximately 100 to 120 lbs., is then "pulled" from the melted mix. The silicon crystal is ground to a specified width and cut to specific lengths. The silicon or "ingot" is inspected and either sent to the Employer's wafering department or shipped to the Employer's facilities in Japan, Europe or Malaysia. The ingot sent to the Employer's wafering department is sliced into the thin wafers and treated with various chemicals. The wafers are then inspected and cleaned. After the wafering process is completed, some of the wafers are packaged and sold, while others are

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<sup>5</sup> The parties stipulated that the lead operators are not supervisors and should be included in any unit found appropriate.

The parties further stipulated that the area supervisor, CIP/QM manager, customer service supervisor, director, engineering supervisor, executive vice president, facilities maintenance supervisor, manager, manufacturing supervisor, QM supervisor, production engineering supervisor, purchasing supervisor, OM supervisor, safety and environmental supervisor, senior human resources supervisor, senior IS supervisor, senior supervisor, team manager, treasurer, vice president and warehouse supervisor possess supervisory indicia listed in Section 2(11) of the Act and therefore should be excluded from the unit.

The parties stipulated that the accountant, engineer, network administrator, software application analyst, senior accountant, senior buyer, senior engineer, senior occupational health nurse, senior process engineer, senior tax accountant, staff engineer, technical analyst, technical buyer, global accountant executive, and technical liaison are professional employees who should be excluded from the unit.

The parties stipulated that the security officer is a guard who should be excluded from the unit.

The parties stipulated that the human resource assistant and payroll administrator are confidential employees and therefore should be excluded from the unit as confidential employees.

The parties stipulated that the accounting specialist, administrative assistant, inventory control specialist, reporting data warehouse specialist, and customer service representative are office clerical employees and should be excluded from the unit.

Based on the foregoing stipulations, I conclude that the leads are be included in the appropriate unit specified herein and that all other employees in the job classifications listed above in this footnote are excluded from the unit for the reasons stipulated to by the parties.

processed through additional chemical treatments in the Employer's Epi (Epitaxial) department. The Epi process generally involves depositing additional silicone on the surface of the wafer based on customer specifications.

The Employer's operation is located in a fairly large multi-building plant in Vancouver, Washington. The CZ department is located in buildings 40 and 60, which are connected by a sky bridge. Although the record is unclear on the precise distance between buildings 40 and 60, it is less than ¼ mile. Wafering is located in building 65, which is adjacent to and shares a wall with building 60.<sup>6</sup> According to record testimony, there is a corridor that runs between buildings 60 and 65. The Epi department is located in buildings 10 and 15, which are located in the northeastern corner of the Employer's property, and are physically separate from both CZ and wafering by a distance of between ½ - 1 mile. In addition to the three major departments, the Employer has additional buildings for office space and plant maintenance shops.

The Employer asserts that the wall-to-wall production and maintenance unit includes operators, technicians, schedulers, training coordinators, order management, maintenance technicians, facility technicians, facility plant operators, and shipping/receiving specialists.

The operators are responsible for running equipment in the production process. There are three categories of operators based on skill: operators I, II, and III. The Employer employs approximately 15 operator Is, 41 operators IIs, and 325 operators IIIs.

The technicians provide engineering and/or technical assistance to the manufacturing process. In this regard, the technicians evaluate production to ensure efficient operations; assist in the installation of new equipment; run test qualifications on new equipment; maintain the equipment to ensure optimal performance; collect and analyze data regarding industrial methods and equipment; and work with training staff to revise training manuals. The technicians work jointly with operators to resolve equipment issues, quality issues, and implement new product recipes. According to the record, six of the seven technicians in the CZ department are former operators. The Employer employs approximately 45 technicians.<sup>7</sup>

The schedulers are responsible for preparing the production schedule and coordinating the flow of materials through specific phases of the production process. The schedulers also produce a status report and collect and analyze data for production trends. The schedulers typically work on the production floor but do not run the equipment. The Employer employs approximately three schedulers.

The training coordinators are responsible for coordinating orientation, training and certification of the operators on various pieces of equipment. The training coordinators are also responsible for developing the Employer's training programs and for writing, revising and reviewing the Employer's training manuals, standard operating procedures and training records. The training coordinator tests the operators for equipment certification and maintains the employees' certification records. The training coordinators do not train the employees directly. Rather, the senior operators or technicians actually train employees. The Employer employs approximately three training coordinators.

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<sup>6</sup> The Employer's wafering department had also extended to building 40 until July 2005, when it consolidated all of its wafering operations into building 65.

<sup>7</sup> In its brief, the Petitioner states that the technicians have the authority to direct other employees. This was not an issue addressed by the parties at the hearing in this case and, other than this isolated statement by the Petitioner in its brief, the parties did not brief the issue. In light of the above and the lack of record evidence dealing with this alleged authority, my decision does not reach the issue of the supervisory status of the technicians.

Order management<sup>8</sup> is responsible for analyzing and matching the Employer's production capacity to the customer demand and developing and improving systems for monitoring customer orders. According to the record testimony, the order management employees have similar job functions to the schedulers, except they are concerned with the overall production process rather than a specific production processes or functions. Order management develop and improve production systems, analyze production capabilities, review production status against the production plan, monitor orders, and provide order information to customer services or customers directly. Order management do not work directly on the production floor or operate equipment. The Employer employs approximately four order management employees.

The maintenance technicians are the primary employees responsible for performing the day-to-day preventative and repair maintenance on the production equipment. In some cases, maintenance technicians work directly with operators while performing repairs or preventative maintenance. Maintenance technicians spend the majority of their time in the production area; however, maintenance technicians do not usually operate equipment. The Employer employs approximately 44 maintenance technicians.

Facility technicians are responsible for performing a variety of installation/removal and preventative maintenance and for testing, calibrating and repairing instrumentation and controls related to the operation of the Employer's plant. Specifically, the facility technicians are responsible for completing work on facility equipment, such as pressure gauges, gas detection monitors, particle counters, HVAC system, industrial instruments, chemical supply unit, gas delivery systems, cooling water and waste water. Similarly, facility plant operators operate the support systems for the Employer's wafering and Epi departments, including waste treatment, coolant filtration, fume scrubber systems, and other building support systems. Facility plant operators are also responsible for receipt, storage, and disposal of chemicals and gases. The Employer employs approximately 12 facility technicians and approximately 9 facility plant operators.

Shipping/receiving specialists<sup>9</sup> are responsible for manufacturing support through the receipt, shipment, storage, and on-site distribution of materials, sub materials, equipment, work-in progress and finished goods. According to the record, the Employer employs approximately four shipping/receiving specialists.

## **B. Functional Integration**

As described above, the Employer's operation is essentially a straight-line production process. The CZ department produces ingot, which is used by the wafering and Epi departments in the creation of wafers. However, the record evidence demonstrates that not all the ingot created in CZ is used by the other departments. Slightly more than 50% of the CZ department's ingot is shipped offshore to support Employer facilities in Japan, Europe, and Malaysia<sup>10</sup> and the Employer sells about 2% of its ingot to other domestic producers. Also, a small percentage of ingot, approximately 5 - 10%, is brought from the Employer's other facilities to its Vancouver plant for the wafering process. Although the Employer's wafering and Epi departments do not use the entire ingot produced in its CZ department, the record demonstrates that wafering and Epi rely on the CZ department's ingot. Accordingly, the Employer's witness Steve Liber testified that if the

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<sup>8</sup> According to the parties, the order management job classification also includes the hourly order resource analysts.

<sup>9</sup> According to the parties, the shipping/receiving specialist also includes the job classification for the stock control specialist.

<sup>10</sup> A portion of the ingot (150mm) is shipped back to the Employer's Epi department after the Employer's Malaysia facility has completed the wafering process.

CZ department failed to meet its production deadline, it would impact the ability of the Employer to make an on-time delivery of completed wafers.

In addition to the production operation, the parties presented additional evidence relevant to the Employer's degree of functional integration. The parties stipulated that each production department must certify the quality of the product. The Employer's plant is subject to a facility-wide budget and the Employer conducts daily managerial meetings during which all department operations are discussed. While the parties also stipulated the different departments have different performance goals, Liber testified that the Employer's overall plant operations are also subject to performance goals.

There is little evidence in the record demonstrating functional independence of one department from another. The parties stipulated that sometimes maintenance will shut down an entire building (such as building 60) and sometimes will shut down only a portion of the building; however, no evidence was introduced regarding why maintenance would shut down the entire building versus a portion and what impact a shutdown has on the remainder of the Employer's operations. Moreover, Petitioner witness Russell Hill testified that frequently wafering and Epi have shutdowns while the CZ department has continued operations. Yet, Hill did not provide any details regarding the reasons for or the length of the shutdowns.

### **C. Frequency of Contact**

The hearing contains fairly divergent testimony on employee contact. At the outset of the hearing, the parties stipulated to the following: employees enter through a common gate; employees are free to park in various employee parking areas; employees are free to use the closest available locker rooms, rest rooms, smoking areas and/or cafeterias located throughout the plant; employees in wafering and CZ sometimes use the same cafeteria; employees by department occasionally get together away from the facility; each department has separate quality and yield targets and separate celebrations for meeting their targets; and Christmas parties are organized by department.

Employer witnesses testified that there is daily interaction between CZ department operators and the operators in the Employer's other departments. Employer witnesses further testified that the remaining categories of employees have regular contact with the operators when fulfilling their job responsibilities. The Petitioner presented several witnesses who testified that the contact between the operators and the remaining job classifications at issue was infrequent, if ever. The Petitioner witnesses, all of whom are operators in the CZ department, testified that they have direct contact with technicians approximately 5 times a month, with schedulers approximately 15 times a month, with maintenance technicians as needed, and no contact with the training coordinator, order management, facilities technicians, facility plant operators or shipping/receiving specialists.

### **D. Interchange of Employees**

The parties stipulated to the receipt of a document showing a number of transfers into or out of the Employer's CZ department from other departments between August 8, 2004, and August 15, 2005. With the exception of the Petitioner's challenges<sup>11</sup> and the apparent transfers within a department, the document demonstrates that 27 employees have transferred from wafering to CZ during the past year. Additionally the record demonstrates that 1 employee transferred from order management to CZ, 7 employees transferred from maintenance to CZ, 4

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<sup>11</sup> The Petitioner presented un rebutted testimony that the evidence of transfers concerning Sherry Stickney, Stacy Boger, Tania Cooksey, Judith Dorman, Robert Faulconer, Candice George, Mary Morin, Sarah Mortenson, Vickie Neal, Gayle Pifer, Mary Short, Coby Sullivan, and Cathleen Vickere, was inaccurate and that these employees never transferred from one department to another.

employees transferred from CZ to maintenance, and 1 employee transferred from CZ to customer service. The record does not provide any additional evidence concerning the circumstances of these transfers, other than that they were permanent transfers. The record further reveals that employees often transferred into positions for which they did not then possess the requisite training.

#### **E. Common Skills and Functions**

As described more fully above, each job classification at issue has unique skills and functions. The operators are responsible for running equipment and producing wafers. The technicians provide engineering and technical assistance to the production process. The schedulers and order management employees prepare and monitor the production schedule and coordinate the production process in the various departments. The maintenance technicians, facility technicians and facility plant operators are responsible for maintaining the equipment throughout the production process. The training coordinator is responsible for coordinating orientation, training and certification of the operators on the various pieces of equipment. Finally, the shipping/receiving specialists receive, ship, store, and distribute of materials in support of the Employer's production process.

The parties stipulate that there is no apprentice program for any department and that there is no formal training required for any of the operators in any department. Additionally, the parties stipulated that there is no license or no prior experience required for any of the operators. According to the record, technicians and training coordinators require an AS degree or 2 years of experience in process manufacturing. Shipping/receiving specialists require no experience. The remaining job classifications, schedulers, order management, machine technicians, facility technicians, facility plant operators, require some form of experience.<sup>12</sup>

There is no evidence in the record that the employees in different departments use or share common pieces of equipment. Rather, each department has different pieces of equipment that require operator certification prior to use. The record demonstrates that not only do different departments use different pieces of equipment, but within a single department there are different types of equipment, each requiring different certification. Accordingly, not all operators within a department are certified on all the equipment. Nevertheless, the Employer's certification process is relatively standardized for all the departments. That process typically includes operators being run through a checklist of major items that need to be understood through demonstrated competence, either written or through observation. Once an operator is certified, they must be recertified annually. Generally, the operators are trained by more senior operators or technicians.

#### **F. Common Wages, Terms and Conditions of Employment**

The parties stipulated that the employees at issue are all hourly employees, who have the same overtime premiums, are paid according to the same payroll, and receive the same shift premiums. The parties further stipulated that employees are subject to the same employee handbook, participate in the same group benefits, use the same timekeeping system, and are serviced by the same human resources and industrial health clinic. Additionally, the parties stipulated that the employees work an 8, 10 or 12 hour shift, attend the Employer's annual picnic and all-employee meetings held twice a year. The parties further stipulated that new employees participate in the same orientation and have the same 90-day probationary period.

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<sup>12</sup> Other than what has been mentioned above, there is no additional evidence concerning the specific skills and training for the employees in job classifications other than operators. Specifically, there is relatively little evidence regarding how the other employees are trained or what are their specific day-to-day job duties.

With regard to operators, the parties stipulated that all the operators in CZ, wafering and Epi have the same pay scale, starting wage rates, step pay increases, paid breaks (90 minutes of paid breaks for 12-hour shift and 50 for a 10-hour shift), performance review cycle, evaluation form, and job description. The operators wear two types of uniforms - blue overalls and a white clean room uniform. In particular, the operators in the Employer's CZ and wafering departments wear both uniform types, while the operators in Epi typically wear the white clean room uniform. The record is unclear whether the other job classifications wear uniforms.

The job classifications at issue have different work schedules. However, it is unclear from the record what the work schedules are for any of the job classifications at issue. The wages for the various job classifications differ. For example operators begin at \$9.38 and reach a maximum of \$18.75. The shipping/receiving specialists begin at \$10.82 and reach a maximum of \$21.68. Schedulers begin at \$12.12 and reach a maximum of \$21.28. Technicians begin at \$12.12 and reach a maximum of \$30.48. Maintenance technicians begin at \$13.56 and reach a maximum of \$30.48. Training coordinators begin at \$15.19 and reach a maximum of \$24.28. Order management begin at \$15.19 and reach a maximum of \$27.21. Facility plant operators begin at \$17.00 and reach a maximum of \$27.21.

All the employees share some of the same safety risks, such as burns, cuts and chemical/gas exposure. The record discloses the CZ department contains some unique risks based on the equipment and size of the silicon crystals, which can weigh well over 100 lbs. The employees in the different department have separate safety meetings, separate emergency response plans, and shutdown procedures for different equipment.

#### **G. Common Supervision**

It is undisputed that the operators in CZ, wafering and Epi report to their respective and separate department supervisors, who are responsible for evaluating, disciplining, assigning and directing employees within their respective departments. Additionally, the technicians in CZ also report to the same department supervisor as the CZ operators. However, it is not clear whether operators in other departments share supervision with the remaining technicians.

The department supervisors report to the department managers. It is unclear how many supervisors there are in each department. According to the record the department managers are Sean Hanna (CZ), Jerome Dyba (wafering), and Steve Martin (Epi). The department managers report to the Director of Operations, Ben Bagherpour. The parties stipulated that the Employer has transferred managers in and out of the CZ department from wafering and Epi.

It is also unclear from the record whether the operators, schedulers, training coordinators, order management, maintenance technicians, facilities technicians, facilities plant operators, and shipping/receiving specialists share common supervision. According to the record, several job classifications, including maintenance technicians, order management, facility technicians, facility plant operators and shipping/receiving specialists work throughout the plant, but report to their particular department (i.e., maintenance, order management-factory planning, facilities/maintenance and warehouse). Further, the record does not state who is responsible for supervising and/or managing these other departments or how these departments relate to manufacturing operations in terms of the Employer's overall organizational structure.

### **III. ANALYSIS**

The Petitioner seeks a unit comprised of the operators in the Employer's CZ department. In response, the Employer asserts that the only appropriate unit is a wall-to-wall production and maintenance unit consisting of operators, technicians, schedulers, order management, training coordinators, maintenance technicians, facility operators, facility plant operators, and

shipping/receiving specialists. In *The Boeing Co.*, 337 NLRB No. 24 (2001), the Board described its policy with respect to determining appropriate units:

The Board's procedure for determining an appropriate unit under Section 9(b) is to examine first the petitioned-for unit. If that unit is appropriate, then the inquiry into the appropriate unit ends. If the petitioned-for unit is not appropriate, the Board may examine the alternative units suggested by the parties, but it also has the discretion to select an appropriate unit that is different from the alternative proposals of the parties. See, e.g., *Overnite Transportation Co.*, 331 NLRB No. 85, slip op. at 2 (2000); *NLRB v. Lake County Assn. for the Retarded*, 128 F.3d 1181, 1185 fn. 2 (7th Cir. 1997).

The Board evaluates the appropriateness of a unit by determining whether the proposed unit shares a community of interest. The Board examines several factors, such as: (1) functional integration; (2) frequency of contact with other employees; (3) interchange with other employees; (4) degree of skill and common functions; (5) commonality of wages, hours, and other working conditions; and (6) shared supervision. *Publix Super Markets, Inc.*, 343 NLRB No. 109 (2004); *Ore-Ida Foods*, 313 NLRB 1016 (1994). It is well settled that a plant-wide unit is presumptively appropriate and that a community of interest inherently exists among employees within a single plant. See *Airco Inc.*, 273 NLRB 348 (1984). Accordingly, in the present case, the Petitioner has the burden to demonstrate that the interests of the CZ department operators are so disparate from both the wafer/Epi operators and the other contested 8 job classifications that they cannot be represented in the same unit. See *Airco, Inc.*, 273 at 349; and *Livingstone College*, 290 NLRB 304 (1988).

The record reveals that the Employer's operation is functionally integrated. The Employer's wafering and Epi departments rely on its CZ department for supplying the majority of their raw product - ingot. Although the evidence suggests that the CZ department may be able to function for an unspecified period of time without support from wafering and Epi, there is no evidence that the reverse is true. Rather, the record strongly suggests the wafering and Epi could not function if the CZ department shut down operations. Accordingly, the employees in wafering and Epi have a shared interest with the employees in the CZ department, that CZ continues operating. Additionally, the Employer creates and maintains a facility-wide budget and conducts managerial meetings to discuss the production process as a whole and topics that pertain to all three departments. Thus, I find contrary to the Petitioner's contentions, that the CZ does not operate independently of the Employer's remaining plant operations.

With regard to employee contact, the parties entered into multiple stipulations that demonstrate that the employees in various departments have regular contact. For example, the employees enter through a common gate, park wherever they desire; are free to use whatever locker rooms, rest rooms, smoking areas and cafeterias they desire. Employees in wafering and CZ sometimes use the same cafeteria. Employees work the same or similar shifts, attend the same annual picnic and all-employee meetings, and attend the same new employee orientation. Additionally, there is evidence that operators in the Employer's CZ department have some regular work related contact with schedulers, technicians, and maintenance technicians. Although the Petitioner's witnesses testified that the operators have minimal contact with the remaining job classifications, the Petitioner failed to produce evidence demonstrating that CZ department operators lack regular contact with the operators in other departments.

There is also sufficient evidence of employee interchange. Not only did the parties stipulate to the existence of some interchange, the record evidence demonstrates that in the past year there have been approximately 40 permanent transfers into or out of the Employer's CZ department.



The record is clear that each of the nine job classifications at issue have unique skills and functions. Accordingly, there is insufficient evidence to find that the operators share common skills and functions with the other employee classifications with the exception of the technicians, many of whom were former operators and have occasion to work closely with the operators with respect to providing assistance to operators as detailed above. Regardless, there is sufficient evidence that all the operators in the Employer's CZ, wafering and Epi departments share common skills and functions. The record further establishes that there is no apprentice program for any of the operators or any formal training required. Additionally there is no licensing or prior experience requirement for the operators. All operators have the same job description, which requires machine operation. Although the operators are certified to operate different types of machines, there is no evidence in the record that the degree of skill it takes to operate the equipment varies significantly from machine to machine.

With regard to common wages, hours and working conditions, there is undisputed evidence in the record that the operators in all the Employer's departments share common wages, hours and working conditions. Again the parties stipulated that all the operators in CZ, wafering and Epi have the same pay scale, starting salaries, step pay increases. Further, all operators receive the same paid breaks, have the same performance review cycle, use the same evaluation form, have the same job description, have the same safety risks of cuts and burns and wear the same uniforms. Moreover, there is evidence that the operators share common working conditions with the other classifications of employees. In this regard, the parties stipulated that all production and maintenance employees are paid an hourly wage rate and the same overtime premiums, fall under the same payroll system, receive the same shift premiums, are subject to the same employee handbook, participate in the same group benefits, use the same timekeeping system, and are serviced by the same human resources and industrial health clinic.

It is undisputed that the operators in CZ, wafering and Epi have different supervision. In particular, the operators report to departmental supervisors who are responsible for evaluating, disciplining, assigning and directing employees. The supervisors report to departmental managers, who report to the Director of Operations, Ben Bagherpour. The record is unclear on the supervisory structure of the remaining eight job classifications. However, the record evidence reveals that some technicians share the same immediate supervision with CZ operators. Regardless, the practical reality is that 505 production and maintenance employees are not going to share the same supervision. See *Airco, Inc.*, 273 NLRB 348 (1984); *Livingstone College*, 290 NLRB 304 (1988). *Huckleberry Youth Programs*, 326 NLRB 1272, 1274 (1998).

Based on the foregoing, there is insufficient evidence to distinguish the CZ department operators from the wafering and Epi department operators. All the operators share common wages, hours, and working conditions. All the operators have similar skills and functions. Additionally, there is evidence of employee interchange, employee contact, and functional integration of the Employer's operations. Based on the foregoing, I conclude that the CZ department operators share a community of interest with the wafering and Epi department operators, and it is inappropriate to segregate them out as a separate bargaining unit.

With regard to the remaining eight job classifications, the Petitioner has the burden of demonstrating that the CZ operators or that Petitioner's alternate unit share a community of interest separate and distinct from the other production and maintenance employees. However, Petitioner has failed to carry this burden. As mentioned above, there is sufficient evidence of functional integration; employee contact; employee interchange; and common benefits, terms and conditions of employment. Furthermore, the Petitioner has not argued for a unit of all the Employer's operators or produced sufficient evidence demonstrating that any of the eight

remaining job classifications are not part of the Employer's production and maintenance operations or are otherwise statutorily excluded.<sup>13</sup> In sum, the Petitioner has failed to meet its burden of rebutting the presumption in favor of a wall-to-wall unit of production and maintenance employees.

#### **IV. CONCLUSION**

In view of the above, record evidence and the parties' briefs, I shall direct an election in the following appropriate Unit:

All regular full-time and part-time production and maintenance employees employed by the Employer at its facility located in Vancouver, Washington; excluding all other professional employees, supervisors, clericals, confidential employees and guards as defined in the Act.

There are approximately 505 employees in the Unit found appropriate.

#### **V. DIRECTION OF ELECTION<sup>14</sup>**

An election by secret ballot shall be conducted by the undersigned among the employees in the Unit found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the Unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike, which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by the International Union of Operating Engineers, Local 701, AFL-CIO.

##### **A. List of Voters**

In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses that may be used to communicate with them. *Excelsior Underwear*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Co.*, 394 U.S. 759 (1969). Accordingly, it is hereby directed that an election eligibility list, containing the alphabetized full names and addresses of all the eligible voters, must be filed by the Employer with the Officer in

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<sup>13</sup> To the extent the Petitioner relies on *Burns & Roe Services*, 313 NLRB 1307 (1994) and *Malallinckrodt Chemical Works*, 162 NLRB 387 (1966) to support its assertion that the CZ department operators constitute an appropriate separate unit, those cases concern units of craft employees. The Petitioner did not assert during the hearing or in its brief that the operators constitute a separate craft unit. Moreover, even if the Petitioner made such an assertion, based on the record before me, I would find that there is insufficient evidence to conclude that the operators constitute a separate craft unit.

<sup>14</sup> As noted above, the Petitioner stated on the record that it is willing to proceed to an election in any unit found appropriate.

Charge for Subregion 36 within 7 days of the date of this Decision and Direction of Election. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). The list must be of sufficiently large type to be clearly legible. This list may initially be used by the Subregion to assist in determining an adequate showing of interest. The Subregion shall, in turn, make the list available to all parties to the election, only after the Subregion shall have determined that an adequate showing of interest among the employees in the unit found appropriate has been established.

In order to be timely filed, such list must be received in Subregion 36, 601 SW Second Avenue, Suite 1910, Portland, Oregon, 97204-3170, on or before September 16, 2005. No extension of time to file this list may be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the filing of such list. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission to (503) 326-5387. Since the list is to be made available to all parties to the election, please furnish a total of four copies, unless the list is submitted by facsimile, in which case only one copy need be submitted.

**B. Notice of Posting Obligations**

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices to Election provided by the Board in areas conspicuous to potential voters for a minimum of 3 working days prior to the date of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

**C. Right to Request Review**

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. This request must be received by the Board in Washington, D.C. by 5 p.m., EDT on September 23, 2005. The request may **not** be filed by facsimile.

In the Regional Office's initial correspondence, the parties were advised that the National Labor Relations Board has expanded the list of permissible documents that may be electronically filed with its offices. If a party wishes to file the above-described document electronically, please refer to the Attachment supplied with the Regional Office's initial correspondence for guidance in doing so. The guidance can also be found under "E-Gov" on the National Labor Relations Board web site: [www.nlr.gov](http://www.nlr.gov).

**DATED** at Seattle, Washington this 9<sup>th</sup> day of September 2005.

/s/ [Richard L. Ahearn]

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